IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 6 of 2005
With
COMPANY PETITION No. 7 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BARODA ISPAT PRIVATE LIMITED - Petitioner(s)
Versus
.. .. - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MR PJ MALKAN for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 03/10/2005

ORAL JUDGMENT

1) Company Petition No.6 of 2005 is preferred by the Baroda Ispat Private Limited, which hereinafter shall be referred to as “the transferor company”, for sanctioning

the scheme of amalgamation. Company Petition No.7 of 2005 is preferred by Hy-tuff Steels Private limited, which hereinafter shall be referred to as “the transferee company”, for sanctioning the scheme of amalgamation.

2) It appears that prior to the scheme presented for sanctioning amalgamation, Company Application No.441 of 2004 was preferred by the transferor company and Company Application No.442 of 2004 was preferred by the transferee company, concerning to the meeting of the equity share holders and also for the secured and unsecured creditors. It appears that on 27-12-2004, this Court (Coram : A.R.Dave, J.) had after considering both the applications passed the order to the effect that the meeting of shareholder of both the applicant companies and meeting of the creditors of the transferor company as required to be held under the provisions of Section 391 (2) of the Companies Act, were not necessary to be held and were dispensed with.

3) In the present petitions, on 17-1-2005 order for admission was passed and advertisement was ordered to be issued in Indian Express, English daily and Jansatta/Loksatta, Gujarati daily both Vadodara editions and publication in Government gazette was dispensed with.

The additional notice was also ordered to be issued to the Central Government in both the petitions. In Company Petition No.6 of 2005, the notice was also ordered to be issued to the Official Liquidator.

4) Thereafter, it appears that the affidavit is filed in Company Petition No.6 of 2005 for publication in both the aforesaid newspapers dated 31-1-2005 and similar is the position of filing the affidavit for publication in Company Petition No.7 of 2005. When the matter is taken up for hearing, it is reiterated that no objection is received nor any objections to the scheme of amalgamation is brought to the notice of this Court in response to both the aforesaid newspaper publications.

5) The Official Liquidator has filed the report dated 20th September, 2005 and it has been stated that the auditor's appointed for the purpose of scrutiny and investigation of the books of accounts and the affairs of the company, submitted that the acts and transactions of the company (transferor company) were conducted within the objects mentioned in the memorandum of Association of the company and the affairs have not been conducted in a manner prejudicial to the interest of the members or to the public interest.

6) On behalf of the Central Government, through Regional Directors, communication dated 26th July, 2005 addressed by the Regional Director to the Registrar of Companies is placed on record to bring certain aspect to the notice of this Court while considering the matter for sanctioning the scheme of amalgamation. The details thereof are as under :

(a) The transferee company may be insisted to increase its Authorised Capital pursuant to the provision of Section 97 of the Companies Act, 1956.

(b) Creditors meeting of the transferee company was not dispensed with by Hon'ble High Court.

(c) As regards Auditors qualifications with regard to non-compliance of Accounting Standard No.15 by both the petitioner for the Financial Year 2002-2003 and 2003-2004. You may examine and submit the report to this Directorate.

7) So far as increase of the authorized share capital is concerned, it is true that on account of the scheme of

amalgamation the consequential requirement would be to increase the authorized share capital at least to the extent of issuance of shares to the shareholders of the transferee company. However, it appears that the increase of the authorized share capital is an inbuilt part of the scheme of amalgamation and Mrs.Soparkar, learned counsel appearing for the transferee company has also declared before the Court that upon the sanctioning of the scheme by this Court, the transferor company shall undertake the necessary procedure for increase of the authorized share capital by payment of the necessary fees etc. Under the said circumstances, I find that the aspect which is brought to the notice of this Court by the Central Government is sufficiently taken care of.

8) So far as meeting of the creditors of the transferee companies are concerned, it appears that the transferee company is having the reserve of Rs. 17,14,330/- and is a profit making company whose profit as per the books of accounts is shown as Rs. 17,20,351/- and, therefore, considering the financial position of the transferee company, it cannot be said that the creditor of the transferee company would be adversely affected by the scheme of amalgamation.

9) In response to the non-compliance of the Accounting Standard No.15 by both transferor as well as transferee company for the financial year 2002-2003 and 2003-2004, it appears that the affidavit has been filed in case of transferee company stating that the retirement liability as on 31-3-2004 was to the tune of not more than Rs.5,000/-. So far as transferee company is concerned, the affidavit has been filed stating that the liability on account of retirement as on 31-3-2004 was to the tune of not more than Rs.7,000/-. Under these circumstances, even if both the liabilities are taken into consideration, it would not create a situation, which may substantially alter the financial credibility of the transferor company as well as of transferee company. Even otherwise also, as the amount is very small, keeping in view the assets of both the companies, the non-compliance to Accounting Standard No.15 is not such which would attract the power of this Court for rejecting the scheme of amalgamation.

10) No other objections are brought to the notice of this Court and, therefore, considering the facts and circumstances more particularly, when the share holders as well as affected creditors have also no objection for the scheme of amalgamation, I find that in absence of any

objection to the sanctioning of the scheme of amalgamation, the scheme of amalgamation between the transferee company and transferor company as prayed deserves to be sanctioned and accordingly the scheme is sanctioned.

11) Consequently, the prayers made in Company Petition No.6 of 2005 as well as Company Petition No.7 of 2005 at paragraph 15 (a) are hereby granted. Petitions are accordingly allowed.

12) The fees of the Central Government Standing Counsel for both the cases shall be paid by the transferee and transferor company and the same quantified at Rs.3,500/- per petition.

(JAYANT PATEL, J.)

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